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October 13, 1998

**VIA HAND DELIVERY**

Megalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

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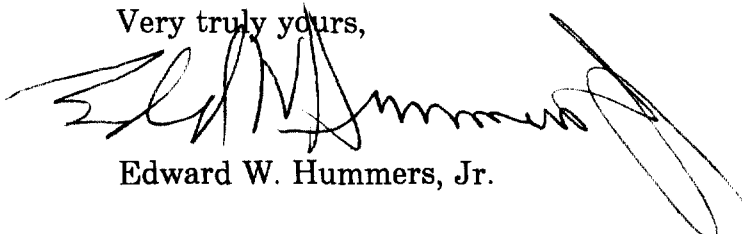
Re: CS Docket No. 98-120  
Carriage of the Transmissions  
of Digital Television Broadcast Stations  
Amendments to Part 76 of the  
Commission's Rules

Dear Ms. Salas:

Transmitted herewith, on behalf of Capitol Broadcasting Company, Inc., licensee of WRAL-TV, Raleigh, North Carolina, are an original and 9 copies of its Comments in CS Docket No.98-120.

Should there be any questions, please communicate with the undersigned.

Very truly yours,

  
Edward W. Hummers, Jr.

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Enclosure

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**Before the  
Federal Communications Commission  
Washington, D. C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Carriage of the Transmissions	)	CS Docket No. 98-120
of Digital Television	)	
Broadcast Stations	)	
	)	
Amendments to Part 76	)	
of the Commission's Rules	)	

**COMMENTS OF CAPITOL BROADCASTING CO., INC.**

Capitol Broadcasting Co., Inc. is the licensee of WRAL-TV, Raleigh, North Carolina, a CBS network affiliated station, and, through a wholly owned subsidiary, the licensee of WJZY-TV, Belmont, North Carolina, a UPN network affiliated station. Capitol is deeply and irrevocably committed to digital television, having operated WRAL-DT as an experimental station since July 23, 1996. Believing that the development of digital broadcasting is important for: the United States to maintain its position in world telecommunications commerce; the citizens of the United States to receive the highest quality of video programming; and the television industry to remain competitive with the satellite, cable and other distributors of video programming, Capitol believes that the Communications Act and the public interest require the imposition of must-carry of DTV signal upon cable television.

The Commission has required the conversion of the present NTSC system of television transmission to digital television. Its reasons for doing so have been clearly stated in *Fifth Report and Order*, MM Docket 87-268, 12 FCC Rcd 12809, 12811-12 as follows:

[W]e wish to promote and preserve free, universally available, local broadcast television in a digital world. Only if DTV achieves broad acceptance can we be assured of the preservation of broadcast television's unique benefit: free, widely accessible programming that serves the public interest. DTV will also help ensure robust competition in the video market that will bring more choices at less cost to American consumers. Particularly given the intense competition in video programming, and the move by other video programming providers to adopt digital technology, it is desirable to encourage broadcasters to offer digital television as soon as possible. We make decisions today designed to promote the viability of digital television services. Digital broadcasters must be permitted to succeed in a competitive market and by doing so, attract consumers to digital. In addition, broadcasters's ability to adapt their services to meet consumer demand will be critical to successful initiation of DTV.

In pursuit of that goal, the Commission has ordered the rapid deployment of DTV service in the U.S. Television licensees have responded and 42 stations will begin DTV transmission next month. *Broadcasting & Cable*, October 12, 1998, p. 10. The Commission's deployment schedule is consistent with the Congressional mandate in the Balanced Budget Act of 1997, 47 U.S.C. § 336(c), which establishes December 31, 2006 as the DTV conversion date, subject to change if DTV receiver penetration does not meet prescribed levels.

The Commission's goal will come to fruition only if must-carry is extended to DTV. Today, cable television is the master antenna to receive broadcast television signals in more than 70 percent of country. The cable industry has made clear in its opposition to the imposition of DTV must-carry that it will not carry **all** of the DTV signals available in a market unless required to do so. As the Supreme Court agreed in *Turner Broadcast System v. FCC*, 117 S.Ct. 1174, 1192:

[I]f viewers are faced with the choice of sacrificing a handful of broadcaster stations to gain access to dozens of cable channels (plus network affiliates), it is likely they would still subscribe to cable even if they would prefer the dropped television stations to the cable programming that replaced them. Substantial evidence introduced on remand bears this out: With the exception of a handful of very popular broadcast stations (typically network affiliates), a cable system's choice between carrying a cable programmer or broadcast station has little or no effect on cable subscriptions, and subscribership thus typically does not bear on carriage decisions. Citations omitted.

It is clear that the Commission must impose must-carry upon cable systems if DTV is to become this country's broadcast television transmission standard and the government is to reclaim spectrum for alternative use. Because of the omnipresence of cable television in the important television markets, without a must-carry requirement, the cable industry will be able to, in the worse case, stop the transition to over-the-air digital television or, in the best case, bring the transition to a crawl. If DTV is to succeed, cable viewers must be able to receive the digital broadcasts of all commercial stations. It will succeed only if it is available to the 70 percent of the country subscribing to cable.

The Cable Television Consumer Protection and Competition Act of 1992, requires "a cable operator of a cable system with more that 12 usable activated channels to carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system." 47 U.S.C. § 534(B)(1)(b). This statutory provision is not limited to NTSC signals and clearly imposes an obligation upon cable systems to carry DTV signals as well as NTSC signals. The public will be served only if cable subscribers are able to receive **both** the NTSC and DTV signals during the transition period. It is, however, appropriate to permit cable systems to phase-in DTV signal carriage. Therefore, Capitol proposes that cable systems be given a year from adoption of must-carry rules in which to prepare themselves for DTV carriage. Thereafter, as channel capacity or system technology improves, DTV carriage would be implemented for those television stations broadcasting a digital signal.

The phase-in period must not be open-ended and must be capped with a requirement that a stations DTV signal must be carried within 18 months after the television station commences

DTV service. It would be appropriate to require television stations to provide formal notice to cable systems of the commencement of DTV service.

If the full promise of DTV is to be brought to the viewers of this country, the entire digital signal must be passed through by cable systems, without modification or degradation. If cable systems are permitted to choose the form and quality of the DTV signal to be distributed, there is every incentive to pass through only the minimum signal that complies with the Commission's rules. Cable economics create an incentive to use as little bandwidth as is possible and impose a disincentive to distribute the highest quality picture to compete with cable programming.

Further, it is imperative that cable operators be required to deliver all local analog and digital signals on the basic tier of service. If placed on a premium tier at a higher price, much of the population will elect not to pay the higher fee and will be excluded from receiving digital programming.

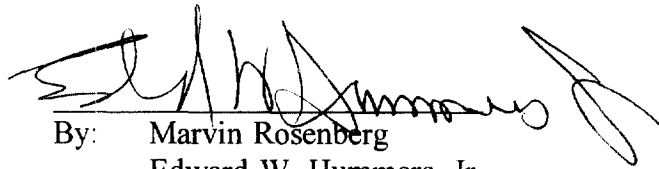
The President's Commission on Public Interest Obligations for Digital Broadcasters has been charged with developing public service programming requirements for broadcasters operating with the new digital technology. Whatever those recommendations, if must-carry is not imposed, it will be an academic exercise if cable subscribers do not install receiving antennas to receive the over-the-air public interest programming broadcast on the digital channels. The public will only be served if digital programming is as available to those who subscribe to cable, as it is to those who receive free over-the-air reception.

Digital television is a gigantic commitment by all components of the television industry, including television licensees, cable operators, transmission equipment manufacturers and receiver

and conversion box manufacturers. It is an interdependent relationship where the refusal or recalcitrance of any one will redound to the detriment of the other participants, the government and the public. The imposition of must-carry of DTV signals is imperative.

Respectfully submitted,

Capitol Broadcasting Co., Inc.

A handwritten signature in black ink, appearing to read 'Marvin Rosenberg', is written over a horizontal line.

By: Marvin Rosenberg  
Edward W. Hummers, Jr.  
Its Counsel

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